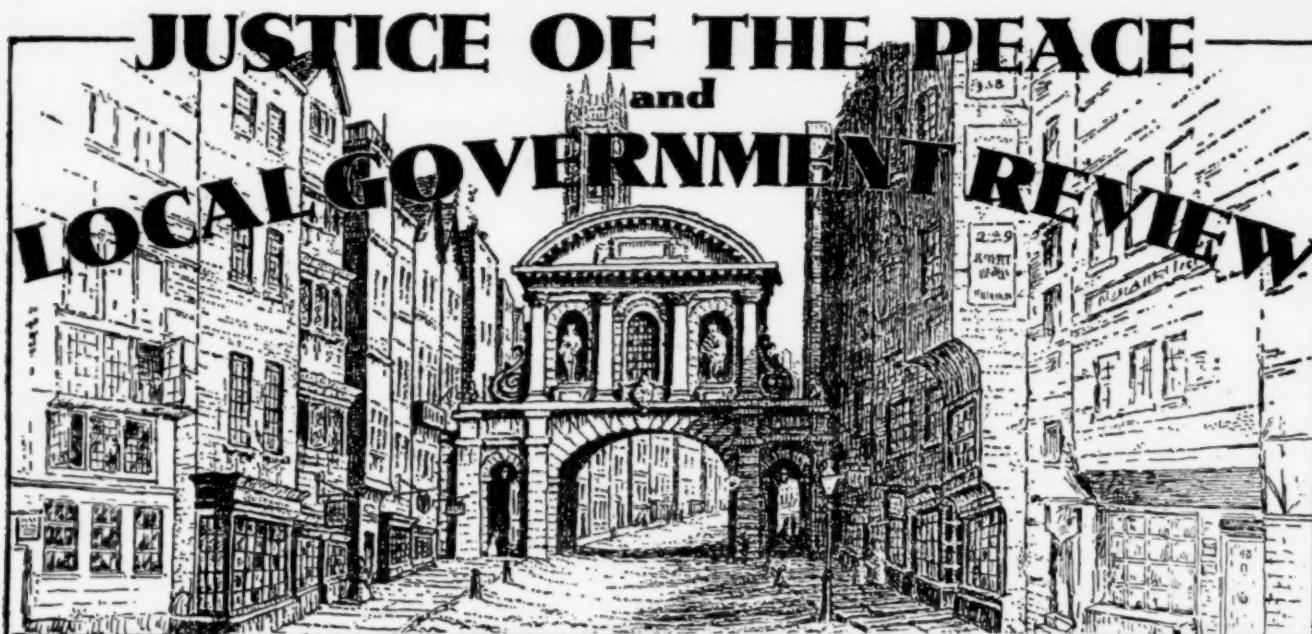


# JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXVIII

LONDON: SATURDAY, FEBRUARY 13, 1954

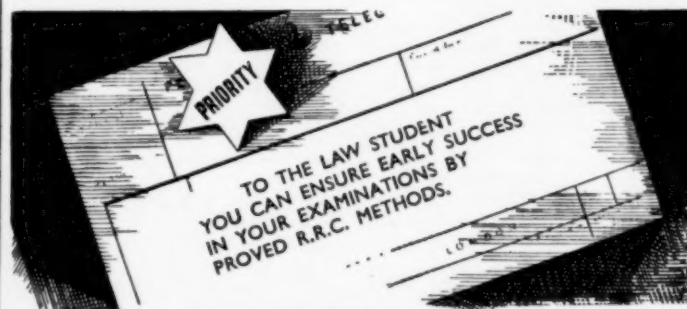
No. 7

## CONTENTS

	PAGE		PAGE
NOTES OF THE WEEK .....	97	LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS .....	105
ARTICLES:		MISCELLANEOUS INFORMATION .....	106
Rape of a Wife .....	99	PERSONALIA .....	108
The Bristol Social Project—A New Approach to Delinquency ..	100	REVIEWS .....	108
Wait a Moment .....	101	THE WEEK IN PARLIAMENT .....	108
School Uniform: Grants and Discipline .....	102	PARLIAMENTARY INTELLIGENCE .....	108
Local Colour .....	109	CORRESPONDENCE .....	109
WEEKLY NOTES OF CASES .....	104	PRACTICAL POINTS .....	111

## REPORTS

<i>Queen's Bench Division</i>		<i>Court of Appeal</i>	
<i>Calvert v. Mayes</i> —Vagrancy—Living on earnings of prostitution	81	<i>Reg. v. Minister of Housing and Local Government. Ex parte Corporation of London</i> —Town and Country Planning—Purchase notice—Service by trustees—"Owner of land"—Person entitled to receive rackrent—Grant by freeholders of long lease—Confirmation of purchase notice .....	88
<i>Chancery Division</i>			
<i>Eastbourne Corporation v. Commissioners of Customs and Excise</i> —Entertainments Duty—Exemption—"Recitation"—"Music hall or other variety entertainment" .....	82		



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### NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. Note: Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

### SITUATIONS VACANT

**KENT COUNTY COUNCIL** requires Conveyancing Clerk in County Clerk's Office. Salary within the Scale £495 by £15 to £540, according to qualifications and experience. Service with another local authority or in a solicitor's office essential. Post pensionable and subject to medical examination. Applications, with names of two referees, to the Clerk of the County Council, County Hall, Maidstone, by February 27, 1954.

**MANCHESTER TOWN CLERK'S DEPARTMENT.** Applications are invited from persons with experience of Common Law and Litigation for the appointment of Common Law Clerk at a salary in accordance with Grade A.P.T. V (£595/£645 at present but from April 1, 1954, to be £620/£670 per annum) of the National Scale of Conditions of Service. Previous Local Government Service is not necessary. Applications, stating age and experience, should be forwarded to the Town Clerk, Town Hall, Manchester 2. Canvassing is prohibited.

### INFORMATION REQUIRED

**INFORMATION** is sought regarding the whereabouts of Charles Victor Lionel Charlton, aged about fifty-one years, approximately five feet, ten inches (5' 10") tall, fair (balding), formerly of Warwick, Bermuda.

Anyone having knowledge of the above should write to Johnston, Carson & Company, Barristers, 901 Somerset Building, Winnipeg, Manitoba, Canada.

### INQUIRIES

**YORKSHIRE DETECTIVE BUREAU** (T. E. Hoyland, Ex-Detective Sergeant). Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. **DIVORCE — OBSERVATIONS — ENQUIRIES**—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

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## COUNTY BOROUGH OF WALSALL

### Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade A.P.T. VIII (£760 rising to £835 per annum by annual increments of £25). Applications endorsed "Assistant Solicitor" and accompanied by copies of not more than three recent testimonials should reach the Town Clerk, Walsall, not later than first post on February 22, 1954. Canvassing in any form will be deemed a disqualification, and applicants must disclose any relationship to any Member or Officer of the Council.

W. STALEY BROOKES,

Town Clerk.

The Council House,  
Walsall.

February 3, 1954.

## BOROUGH OF HENDON

### Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with considerable Local Government experience for the above appointment. Salary: £1,650 × £50 — £1,900 per annum. Full particulars obtainable from the Town Clerk, Town Hall, Hendon, N.W.4, to whom applications for the post must be sent by March 3, 1954.

LEONARD WORDEN,

Town Clerk.

## ST. ALBANS (COUNTY) AND HATFIELD PETTY SESSIONAL DIVISIONS

A SECOND ASSISTANT (male) is required in the Office of the Clerk to the Justices of the above Divisions, whose duties would be the keeping of all the accounts of the Justices' Clerk's Office and acting as Collecting Officer for the Divisions.

Experience of work of a similar nature would be of advantage.

The appointment is subject to the National Council Scheme providing for a commencing salary of £355 at the age of 25 rising to a maximum of £450 at the age of 30.

Applications in writing, with the names of two referees, should be addressed to T. Anderson-Davis, Clerk to the Justices, Midland Bank Chambers, Chequer Street, St. Albans.

## CITY OF SALFORD

### Town Clerk and Clerk of the Peace

APPLICATIONS are invited from suitably qualified persons for the above positions.

Previous local government experience is essential.

Salary as Town Clerk £2,500, rising to £2,750.

The conditions of service recommended by the Joint Negotiating Committee for Town Clerks will apply to the appointment and the salary as Clerk of the Peace will be £250 per annum.

Applications, giving the names of two referees, addressed "The Chairman of the Finance Committee, Town Hall, Salford 3, Lancs." and endorsed "Town Clerk and Clerk of the Peace," must reach me not later than February 27, 1954.

H. H. TOMSON,

Town Clerk.

Town Hall,  
Salford 3.

## LANCASHIRE MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited for the appointment of First Assistant to the part-time Clerk to the Colne Petty Sessional Division and Nelson Borough Justices, at a salary in accordance with a scale of £650 rising by annual increments of £20 to £710. The appointment will be superannuable and subject to medical examination.

Applications, giving full details of experience, and the names of two referees, should be forwarded to me not later than February 20, 1954.

W. WHITTLE,

Clerk to the Justices.

Town Hall,  
Nelson.

## COUNTY BOROUGH OF READING

### Children's Department

APPLICATIONS are invited from appropriately qualified and experienced women for the post of Child Care Officer. Salary Scale A.P.T. 1 (£465 × £15 — £510). Further particulars and application forms from Children's Officer, 22, Market Place, Reading.

## BOROUGH OF KIDDERMINSTER

### Deputy Town Clerk

APPLICATIONS are invited from Solicitors for the above appointment. Salary—Grade X commencing at second stage, i.e., £960 rising to £1,050 per annum.

Further particulars and application form will be supplied on request. Housing accommodation will be provided if required.

Closing date February 25, 1954.

JOHN L. EVANS,

Town Clerk.

Town Hall,  
Kidderminster,  
Worcs.

# Justice of the Peace and Local Government Review

[ESTABLISHED 1887.]

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LONDON : SATURDAY, FEBRUARY 13, 1954

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## NOTES of the WEEK

### Goldfish Not An "Article"

The goldfish, not the amorous goldfish of "the Geisha" or the fish with the "gold fin in the porphyry font," but the humble and probably undersized creature offered by the rag and bone man has come into the news again, this time to make settled law.

In *Daly v. Cannon* (*The Times*, January 21) a Divisional Court affirmed the decision of a magistrates' court, dismissing an information preferred against the respondent under s. 154 of the Public Health Act, 1936, on the ground that a goldfish was not an article within the meaning of the section.

In the course of his judgment the Lord Chief Justice paid a compliment to Mr. J. P. Eddy, Q.C., who had decided another case at West Ham by dismissing the information on the same ground. Lord Goddard referred to that case, the judgment in which was printed at Mr. Eddy's request at 117 J.P.N. 24, saying that he would be prepared to accept it as his own judgment. We have several times expressed the hope, since decisions had differed in different courts, that the point would be taken higher: indeed, we understood a year ago (*loc. cit.*) that this was then to be done. The Divisional Court emphasized that this was a penal provision, and that if there was any doubt about its interpretation that doubt must be resolved in favour of the defendant, thus following Mr. Eddy's reasoning, in preference to that drawn from the history of the section at 115 J.P.N. 291.

If it is still considered, as the history of the section shows that Parliament considered up to 1925, that, in the interest of the public, rag and bone dealers should be specially restricted in their dealings with children, this will be a matter for amending legislation. If it is against the public interest for such a dealer to give (say) a looking glass to a child in exchange for rags, there seems no merit in leaving him free to give the child a kitten.

### Just and Reasonable Costs

The power of a magistrates' court to award costs as between parties is such as to give them a wide discretion, there being no statutory scale or limit, the requirement being that the cost shall be just and reasonable. If, however, costs are awarded which are not just and reasonable, the aggrieved party can apply to the High Court to quash the order on the ground of excess of jurisdiction.

In a case which came before the Divisional Court on January 27 such an order was quashed, and the justices were ordered to pay the costs of the appeal. Before a magistrates' court a man had been fined and ordered to pay £21 costs in respect of offences connected with the management of a club, of which a Mrs. Petrou was said to be the secretary. She was summoned to show cause

why the club should not be struck off the register, and on this complaint the court made an order striking the club off, and ordered her to pay £100 costs, although it had been stated that the whole of the police costs amounted to twenty-one guineas. The Lord Chief Justice said these were not costs that the appellant had been ordered to pay, but were a fine disguised as costs, though she had not been convicted of any offence.

As the Court not only ordered costs to be paid by the justices but also added that the documents should be sent to the Lord Chancellor, it is obvious that a serious view was taken of the case. The justices appeared by learned counsel, who apologized on their behalf.

It is not uncommon for magistrates to be asked by advocates to spare the defendant from conviction with all its consequences, and invited to impose whatever costs they think fit, which will be gladly paid. That cannot really justify the award of costs that have by no means been incurred, and which are in fact in substitution for an appropriate fine. Neither can there be any justification for adding excessive costs to what the court considers an inadequate maximum fine. It may well be that many maximum fines prescribed in times when the value of money was much greater than it is today need revision. That is a matter upon which representations can be made and which Parliament may be asked to consider. It is not for the courts to get round the law.

### Courtesy

It is often said that many road accidents would be avoided if drivers would show courtesy towards one another and towards other road users. That is undoubtedly true; if two motorists both think they have the right of the road and refuse to give way, a collision which could easily be avoided is likely to take place. Even a road-user who makes a mistake or does something foolish is entitled to consideration, and should not be imperilled by someone who is standing on his rights. Courtesy on the road is one of the best contributions towards safety.

It may not have occurred to everybody that this question of courtesy has its bearings on delinquency and moral standards. In the course of a speech at a moral welfare conference at Peterborough, the Home Secretary touched upon this matter: He said that among adolescents, delinquency among boys typically takes the form of stealing and housebreaking, and among girls of sexual misbehaviour, but the causes were much the same in either sex. "Indeed," he went on, "in the field of prevention, whether of criminal or moral offences, the ultimate problem is the same; how to create a state of feeling in which people are prevented from doing such things by respect for themselves and by the pressure of the opinion of their fellows. . . ."

"Mother and father have a particular task in helping their children to learn the normal courtesies of life, and the ordinary ways in which adults show their regard for one another. Often without realizing it they are teaching them how men and women can behave to one another satisfactorily." Mothers who expected courtesy and help from their sons were training them to become courteous helpmeets when they married. Fathers who showed regard for their daughters in the courtesies of everyday life, were not only helping them to develop good social behaviour, but were also helping them to set a proper standard of behaviour in those whom they might marry.

Breakdowns in family life, as we all know, are a contributory cause of juvenile crime and of much immorality. If such ideas of parenthood as were suggested by Sir David Maxwell Fyfe were more generally accepted, if there were more mutual respect and courtesy in all homes, there would be less crime and immorality. Courtesy, which is more than the observance of conventions and formalities (though these are not without their value), is the practice of the Christian principle of doing unto others as we would that they should do unto us. Sir David said he was convinced that one of the most important causes of the increase in crime and the decline in moral standards was the lack of the sanction of religion in daily life.

### Maintenance Agreement and National Assistance

It is well established that even if a wife has entered into an agreement to accept a certain periodical allowance for her maintenance and not to sue her husband so long as he complies with that agreement, a court may still entertain an application for an order on the ground of wilful neglect to provide reasonable maintenance, if the sum agreed upon proves to be inadequate. Decisions on the point are *Tulip v. Tulip* [1951] 2 All E.R. 91; *Dowell v. Dowell* [1952] 2 All E.R. 141, 116 J.P. 350.

In a case referred to in *The Times*, January 30, the Divisional Court allowed an appeal from a decision of justices to the effect that the National Assistance Board could not recover the amount of assistance given to a wife who was being paid £1 a week under an agreement by her husband. The magistrates had previously decided, wrongly as held by the High Court, that they could not make a maintenance order on the application of the wife. Thereupon, she applied to the National Assistance Board, and she was granted assistance. When the Board sought to recover such assistance under s. 43 of the National Assistance Act, 1948, the magistrates declined to make an order. The case was sent back for them to decide what was a reasonable amount for the husband to pay.

Lord Goddard referred to *Tulip v. Tulip*, *supra*, and said that a husband was liable to maintain his wife unless she had committed a matrimonial offence.

### Absconding from Approved Schools

According to a newspaper report, there were last year 220 cases of absconding from an approved school which ordinarily accommodates about forty girls. This, of course, does not mean that 220 different girls absconded, the fact being that a number of girls absconded many times.

This is sure to cause public comment, and the position must be causing the managers and staff anxiety. It is well-known that girls in approved schools often provide more problems than do boys, and the question has been discussed from time to time whether there ought not to be schools available where discipline is stricter and escape made more difficult than is the case in most schools. Open schools and abundance of freedom are desirable for the less difficult young people, but apparently quite unsuitable for a few who abuse privileges.

A witness in a case in which charges of assisting girls to escape were made, appears to have referred to "abscondees". Why we should say "abscondees" or "escapees" instead of "absconders" or "escapers" we have never been able to understand. We do not say "desertees", nor do we say "prisoners", though there would be more justification for "imprisoners" than for "abscondees". It is to be hoped that these ugly and inappropriate words will be discontinued, and will at all events not be adopted officially.

"Employee" and "trainee" are apt words to describe a person who is being employed or trained, but why this vogue for a general extension of the use of "ee" when "er" is clearly right?

### Manchester and Salford Poor Man's Lawyer Association

Contrary to expectations, the passing of the Legal Aid and Advice Act, 1949, has not affected the work of this Association to such an extent as to make it questionable whether or not it should continue. There has been some reduction in the number of cases dealt with, but the Association is functioning on its old lines.

In these days there are all too many people who are anxious to get something for nothing, and the latest report of the Association states:

"A number of cases have been brought to the committee's notice of persons attending at the centres for advice who could well afford to employ a solicitor to act for them, and the committee urge all advisers at the centres to ensure that, as far as possible, this practice is stamped out. It is only fair to record that some of these persons call merely to obtain the name and address of a lawyer to act for them."

The report refers to the Second Report of the Law Society on the Operation and Finance of Part I of the Legal Aid and Advice Act, and notes in particular the regret of the Law Society at the delay in bringing into operation certain sections of the Act and in establishing advice centres. It is claimed that public money might actually be saved from the fact that more cases could be settled without the expense of litigation. As the Law Society put it:

"The clients of an ordinary solicitor's office get advice first, and only as a last resort are they advised to take proceedings; most firms take more pride in keeping their clients out of court than in successfully conducting their litigation. The same principle obtains in those Legal Advice Centres that can still muster sufficient voluntary subscriptions to go on running, and in the London Centres ninety per cent. of cases are resolved without litigation. Under the Government scheme it is exactly the other way about: money is only available for the expensive 'surgical operation' of litigation and none is spent on the cheaper 'preventive medicine' of legal advice."

The Association dealt with some 4,000 applicants during the year under review. Their troubles were various, but matrimonial difficulties remained the largest class. The Association emphasizes the need for legal representation in the magistrates' courts. A case is quoted in which the wife of a miner said to have been deserted by him failed, more than once, to get a maintenance order, apparently on her husband's offer to return to her. When assistance was granted to her by the Association she obtained an order when, states the Report, "her husband admitted that he earned from £17 to £24 per week. His wife and child had been maintained from public funds over a period of eight months at the rate of £3 per week."

## Hospital Private Patients

Misunderstandings have sometimes arisen about the admission of persons to hospital as private patients. This may have been arranged on the suggestion of the patient's doctor because it is easier to get into some hospitals thereby, and there have been some cases where the patient did not seem to have realized that the full maintenance rate would be charged. This matter has been dealt with satisfactorily in a recent memorandum issued by the Ministry of Health, which should prevent any possibility of misunderstanding arising or of giving grounds for later complaint. It is now laid down that on or before admission a written understanding must be given by the patient or his representative to pay the requisite charges. The patient must also be made to understand fully the meaning of the undertaking and as to the alternative provision which may be made. For instance, he must be told of the alternative types of accommodation which are available, and in particular, that medically urgent cases can be admitted at once, without charge, and that patients who require only privacy may be able to obtain it by admission to a bed provided under s. 4 of the National Health Service Act. He must also be told what the hospital charges are and what medical fees—including any which may subsequently become due to practitioners other than the practitioner under whose care he is being admitted—he may be liable to pay. It is emphasized in the memorandum that in view of the possibility that the total of

the medical fees may be increased from the normal maximum of seventy-five guineas to a figure of anything up to 125 guineas, the patient or his representative should be clearly told the probable maximum fees. It must also be explained to the patient that the fees payable to the practitioner concerned are a matter between himself and the doctor.

The memorandum also deals with the procedure for assessing charges under s. 4 on patients in mental and mental deficiency hospitals, because the patient may have to be moved from a single room to a small ward and *vice versa*. It is laid down that if a patient who was admitted to a single room and has undertaken to pay at the higher rate is, for the convenience of the hospital, transferred to a small ward, he would pay at the reduced rate for as long as he is in a small ward, reverting to the higher rate if he is moved back to a single room. If, however, a patient who has been admitted to a small ward and has undertaken to pay at the reduced rate is, for the convenience of the hospital, transferred to a single room, he should continue to pay at the reduced rate. He would, of course, pay at the higher rate if he has asked to be transferred to a single room and had signed an appropriate undertaking. The procedure for the treatment of private out-patients is also explained. We hope these revised instructions will prevent any misunderstandings arising in future, and that they will be made fully known to those who may be called upon to advise on such matters.

## RAPE OF A WIFE

By R. M. HOWARD, Barrister-at-Law

On December 10, 1953, in *R. v. Miller* at Hampshire Assizes, Lynskey, J., upheld a submission on behalf of the defence that a husband cannot be found guilty of rape of his wife and directed the jury accordingly to acquit.

In coming to this decision, the learned Judge was upholding a general principle of law dating from the days of Sir Matthew Hale. In vol. I of the *Pleas of the Crown*, p. 629, he states: "But the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract."

This principle was upheld by a majority of the judges in *R. v. Clarence* [1888] 22 Q.B.D. 23 (C.C.R.); 53 J.P. 149. In that case the prisoner was convicted of causing grievous bodily harm and actual bodily harm to his wife. The "harm" complained of was the communication of gonorrhoea by the husband to the wife during the act of intercourse, the wife being unaware that the husband suffered from the disease. The conviction was quashed by a majority of the judges on the grounds that the act of intercourse was not unlawful. A. L. Smith, J., said at p. 37: "At marriage the wife consents to the husband exercising the marital right. The consent then given is not confined to a husband when sound in body, for I suppose no one would assert that a husband was guilty of an offence because he exercised such right when afflicted with some complaint of which he was then ignorant. Until the consent given at marriage be revoked, how can it be said that the husband in exercising the marital right has assaulted his wife? In the present case, at the time the incriminated act was committed, the consent given at marriage stood unrevoked. Then how is it an assault?" Hawkins, J., said at p. 53: "The sexual commission is by virtue of the irrevocable privilege conferred once for all on the husband at the time of the marriage, and not at all by virtue of a consent given upon each act of commission, as in the case between unmarried

persons." Field, J., one of the dissenting judges, who doubted the wisdom of *Hale*, said at p. 57: "The authority of *Hale* in such a matter is indoubtedly as high as any can be, but no other authority is cited by him for this proposition, and I should hesitate before I adopted it."

It was thus settled law that a husband could not be guilty of rape on his wife in the first degree, although that would not prevent him from being guilty in the second degree—see 1 *Hale* 620 and *R. v. Eldershaw* (1828) 3 C. & P. 396; *R. v. Waite* [1892] 2 Q.B. 600; *R. v. Williams* [1893] 1 Q.B. 320. But now a further decision has created an exception to this principle, an exception which was un contemplated in the days of *Hale* before dissolution of the marriage relationship by process of law was possible. In *R. v. Clarke* [1949] 33 Cr. App. R. 216; 2 All E.R. 448; Byrne, J., held that a separation order made by justices containing a provision that the wife be no longer bound to cohabit with her husband had the effect of revoking the consent which the wife by process of law, namely, marriage, has given to the husband to exercise the marital right during such time as the ordinary relations subsist between them, and consequently, while the order is in force, the husband is not entitled to have sexual intercourse without her consent, and, if he does so, he will be guilty of rape. At p. 218 (33 Cr.App.R.) he stated, "That order has in all respects the effect of a decree of judicial separation, and one result of it is that both the person and the property of the wife are protected by it. It could be discharged if the wife committed adultery or if she voluntarily resumed cohabitation with the husband, and by "cohabitation," as I understand it, is meant intercourse when the parties have begun to live together again, or intercourse when they are not living under the same roof."

In the case at Hampshire Assizes referred to above, counsel for the prosecution sought to make a further inroad on the general principle of law by submitting that as the wife had filed a divorce petition which was in the process of being heard, the ordinary

marriage relationship created by the marriage contract did not exist, but *Lynskey, J.*, held that there was nothing which could amount to a revocation of the wife's consent, no separation order, no judicial separation and no agreement to separate. If there had been an agreement to separate, and particularly if it contained a non-molestation clause, he would take the view that it revoked the wife's consent.

Forcible connexion with a wife by her husband may, however, amount to common assault, as was held in the case at *Hampshire Assizes*. On a second count alleging actual bodily harm, counsel for the defence had contended that it was no assault for a man to have intercourse with his wife, even if she were unwilling and resisted; and that the depositions disclosed no actual bodily harm. In directing the jury, *Lynskey, J.*, said that *R. v. Jackson*

[1891] 1 Q.B. 671 seemed to indicate that the husband was not entitled to use force in enforcing his right to marital intercourse, and though not guilty of rape, was liable for whatever consequences ensued. There was evidence that the wife was afterwards in a depressed and hysterical condition, and in these days it could not be said that this was not actual bodily harm, and on this evidence the jury convicted of common assault.

In addition to the protection afforded by the criminal courts, a wife, who has been subjected to forcible connexion by her husband, may have a remedy in the divorce court, where the circumstances may amount to cruelty if causing actual or apprehended injury to health.

Therefore apart from certain defined limits and exceptions indicated above, a wife has no remedy for rape against her husband.

## THE BRISTOL SOCIAL PROJECT—A NEW APPROACH TO DELINQUENCY

By ARTHUR MADDISON, *Member of Bristol City Council*

Among British writers there has been a common assumption that juvenile delinquency is primarily a matter of personality and behaviour disturbance. Because the term is in wide use, it is taken for granted that it denotes a distinct and identifiable disorder, similar to a physical disease.

That society's attitude to delinquency is undergoing a change is, perhaps, best exemplified in the emergence, in the city of Bristol, of a unique social experiment—the Bristol Social Project. The findings of this project, likely to last for at least five years, may well bring about some modifications in the orthodox approach to delinquency. They may even effect a profound change in our whole social thinking.

The background story of how this project came into being, and of its present and future experiments, illustrate how the emphasis has shifted from a study of the individual, to that of the family, and from the family-unit to a study of community relations.

On behalf of the Carnegie United Kingdom Trust, Professor John Mack, Stevenson Lecturer in Citizenship, Glasgow University, has carried out his own private survey of delinquency. Among other things, he concludes that delinquency is a product of family disorganization, and that this in turn is but one of the many strains and stresses of industrialized society.

Mack draws attention to the unfortunate tendency for the authorities to concentrate on the prevention of delinquency in the individual, and asks that attention be directed towards the deeper problem of which delinquency is an indicator.

It is, of course, observable that, in contemporary society, material difficulties are lessening, and emotional strain is increasing, as instanced by the steady growth of such organizations as the Family Guidance Councils, the Family Service Units and, as in Manchester, Family Service Centres. It was thus recommended that investigations should be initiated into the social structure which sustains family life. A study, in fact, of community-living, and social environment.

It was while this private inquiry was being undertaken, that a joint circular on juvenile delinquency was sent to all local authorities by the Home Office and the Ministry of Education. Bristol's Lord Mayor immediately convened a special conference, representative of every phase of the city's social life. The conference was held in April, 1951, at Clevedon, Somerset, and

has since appropriately become known as the Clevedon Workshop, inasmuch as the conference had an under-lying practical aim, that of the Christian re-education of society in the meaning of the family.

It was the speech of Sir Phillip Morris, Vice-Chancellor of Bristol University, that really indicated the lines of future policy. Sir Philip said that we were all potential or actual delinquents. There was a profound contrast between focussing attention on delinquency as a problem requiring special measures, and dissolving and absorbing it in the unofficial manner of the small community. Too much reliance was placed on the creation of special shock forces to combat the abnormal. A healthy society should take it in its stride.

The Vice-Chancellor went on to ask whether society today could absorb its own viruses and poisons. Social education was needed because today the welfare of society depended less on the knowledge of a few chosen leaders, and more on the ability of the whole community to use discrimination and understanding in all spheres of life. There was need for a social project, perhaps on a new housing estate, to assist people in the process of social adaptation.

A contribution from one representative at the conference drew attention to an inter-war housing estate, regarded in Bristol, by social workers and the juvenile court, as a "black spot". It was insisted that there were deficiencies in the social framework of the neighbourhood and that it was lacking in social cohesiveness, there being little sense of community and no accepted standards of behaviour.

A strongly representative committee of about thirty persons came into being, subsequently known as the Bristol Social Project, which immediately requested from the Carnegie Trust the sum of £5,000 *per annum* for a period of five years, so that some such study of community-living as was envisaged by the Clevedon Workshop could be undertaken. Influenced, no doubt, by the recommendations of John Mack, the Bristol request was accepted by the Trustees.

That Bristol should be chosen by the Trust for such an experiment in itself indicates a shift of emphasis in the traditional attitude to delinquency. It is considered that Bristol is a city that is more likely to suggest the shape of the city of the future than any other in Britain. It has a low rate of delinquency, the

second lowest of the large cities. In studying why people are anti-social, it is the view that we should also study why they are "clubbable" and co-operative. Bristol is able to look to the future much more than industrial conurbations like Liverpool, Leeds and Glasgow, which carry a heavy legacy of old and long standing evils.

It is probable that Bristol's low incidence of social disease is a consequence of its favourable environment. The city avoided the worst excesses of nineteenth century heavy industry. Its growth of population, unlike that of Birmingham for example, was not sudden or catastrophic, and as a result there was no sacrifice of amenities. Its population, until recent years, was mainly homogeneous, multiplying chiefly from within. And its standard of living has been comparatively high, not lessened by the introduction of aeroplane manufacture and engineering. According to John Mack, Bristol, with little of the debris of the industrial revolution to clear up, and well launched on the twentieth century technical age, is a better prototype of the city of the future than are the urban populations of the north.

The project's full committee comprises, in addition to the Lord Mayor and the Vice-Chancellor, who are honorary members, persons representing the University, the Bristol Council of Social Services, city corporation, youth committee, school teachers, religious bodies, city constabulary, magistrates, probation committee and the women's organizations.

Basically, however, the project is governed by an executive committee of ten, including the chairman of the Juvenile Bench, two city councillors, three members of the Council of Social Services, three members of the University, and the deputy M.O.H.

The chairmanship is held by Professor Roger Wilson, head of the Department of Education at the University of Bristol.

A full-time director, Dr. John Spencer of the London School of Economics, a London magistrate and criminologist, has been appointed. The committee is now giving consideration to several Bristol neighbourhoods with a view to an early selection of one which has signs of a lack of social integration. When a team of research workers has been appointed, it is assumed they will encourage social responsibility, self-help and the harmonious development of the local voluntary and statutory social services. The whole aim is to help create a strong community, bound together by good neighbourliness that can absorb its own delinquent tendencies. The team will be expected to analyze and interpret social processes at work. They should be able to make tentative interpretations of their experiences and guide those responsible for the social work of the city as a whole.

At the end of the five years, the Trust will require a written report which can be published. Such a report should throw light on the relationship between strong family life, healthy community relationships and acceptable personal conduct. It is the opinion of the committee that action, observation, analysis and interpretation will be the main responsibilities of the team, under the leadership of the director.

The committee is undoubtedly wise in taking a purely pragmatic view of the project, having no predetermined ideas as to how the scheme is likely to develop over the five years. Flexibility is the operative word in the initial stages of such a social study as this. It is almost certain, having the skilled leadership it has, to produce material of inestimable value to all probation officers, police, sociologists, magistrates and social workers of every kind.

## WAIT A MOMENT

By J. A. CÆSAR

It is not unlikely that, having read certain of the press reports on the subject, which appeared contemporaneously with the publication of the news of the making of the Motor Vehicles (Construction and Use) (Amendment) Regulations, 1953 (S.I. 1953 No. 1872), many members of the public (including, in particular, those who may only recently have become eligible to be termed "motorists") will have been led to believe that the requirements of the Regulations that, with certain exceptions, "no person shall . . . cause or permit any motor vehicle to stand on any road during the hours of darkness otherwise than with the left or near side of the vehicle as close as may be to the edge of the carriageway" is something which is entirely new. Such an impression on the part of those members of the public (if such there be) is, of course, entirely erroneous.

True, the 1953 Regulations—which amend S.I. 1951 No. 2101, and which were made by the Minister of Transport and Civil Aviation in exercise of his powers under the Road Traffic Act, 1930—only came into operation on January 1, 1954, but, to the extent that they deal with the matter mentioned above, they—like the Motor Vehicles (Construction and Use) (Track Laying Vehicles) (Amendment) Regulations, 1953 (S.I. 1953 No. 1873)—merely perpetuate (in a slightly different form, and under the authority of an entirely different piece of legislation) a prohibition which, from December 1, 1939, to December 31, 1953, was imposed by the Emergency Powers (Defence) Standing Vehicles Order, 1939 (S.R. & O. 1939 No. 1720), which Order (as amended by S.R. & O. 1940 No. 396) was made by the Minister of Transport under reg. 70 of the Defence (General)

Regulations, 1939, and was revoked, with effect from January 1, 1954, by the Regulation of Traffic on Highways (Revocation) Order, 1953 (S.I. 1953 No. 1874).

Both for the current regulations and the revoked 1939 Order the definition of "the hours of darkness" is the same (*viz.*, "as regards the period of summer time, the time between one hour after sunset and one hour before sunrise, and, as respects the remainder of the year, the time between half-an-hour after sunset and half-an-hour before sunrise")—the current regulations, however, set out this definition in full in the body of the regulations, whereas the 1939 Order merely incorporated it by reference to the definition contained in s. 1 of the Road Transport Lighting Act, 1927; conversely, the 1939 Order specifically defined "road" as meaning "any road to which the public has access," whereas for the purposes of the current Regulations a "road" presumably has the wider meaning assigned to it by s. 121 of the Road Traffic Act, 1930.

Also like the 1939 Order, the current regulations provide that the prohibition on vehicles being allowed to "stand" (or "remain at rest," according to the 1939 Order) on the right-hand side of a road at night shall not apply in a case where a police officer in uniform so permits, and shall not apply to (a) motor vehicles which are "being used for fire brigade, ambulance . . . police . . . or . . . defence purposes" if such prohibition "would hinder or be likely to hinder" the use of the vehicles for those purposes on the occasion in question, (b) motor vehicles "waiting to set down or pick up passengers in accordance with regulations made or directions given by a chief officer of police

in regard to such setting down or picking up", or (c) motor vehicles standing "in any road in which vehicles are allowed to proceed in one direction only".

In other respects, however, the current regulations are less restrictive than was the 1939 Order. Under the 1939 Order (as amended in 1940) the special exemption of public utility vehicles from the restriction on "remaining at rest" on a road at night applied only to certain vehicles which in certain circumstances were being "used for the purposes of an electricity undertaking, gas undertaking or electric transport undertaking, and for no other purpose"; under the current regulations the restriction does not apply to motor vehicles "being used in connection with . . . any building operation or demolition, . . . the repair of any other vehicle, . . . the removal of any obstruction to traffic, . . . the maintenance, repair or reconstruction of any road, or . . . the laying, erection, alteration or repair . . . of any sewer, of any main, pipe or apparatus for the supply of gas, water or electricity, or any telegraph or telephone wires, cables, posts or supports, or of the apparatus of any electric transport undertaking" in cases where the use of the vehicles for such purposes would be, or would be likely to be, hindered by the operation of the restriction at the time in question.

Likewise the current regulations go further than did the 1939 Order by providing for the exemption of motor vehicles "standing on a part of a road specially set aside . . . as a stand for public service vehicles or as a place at which such vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers" in cases where the operation of the restriction "would conflict with the . . . Order, Regulations or Byelaws governing the use of such part of a road for that purpose;" these exemptions are additional to the similar

exemptions (contained in both the current Regulations and the 1939 Order) in respect of vehicles "standing on a part of a road specially set aside for the parking of vehicles or as a stand for hackney carriages."

In this connexion, it is interesting to note that, subject to what is said above, the exemption does not extend to vehicles waiting in a road or part of a road which is subject merely to, say, a Unilateral Waiting Order under s. 46 (2) (b) of the Road Traffic Act, 1930 (as amended by s. 29 (4) of the Road and Rail Traffic Act, 1933), the section under which, *inter alia*, "One-Way Traffic Orders" may be made. A Unilateral Waiting Order—unlike an Order under s. 68 (1) (c) of the Public Health Act, 1925 (as amended by s. 16 of the Restriction of Ribbon Development Act, 1935, and extended by s. 90 of the Road Traffic Act, 1930), which can authorize the use of particular portions of specified streets as parking places (provided such use does not unreasonably prevent access to adjoining premises or the use of the streets by other persons entitled to use them or does not create a nuisance), but which cannot, *per se*, prohibit or restrict waiting except in so far as it may be desired to limit either the *class* of vehicle which may wait, or the *period of time* during which waiting is permitted, on the parking places established by the Order—does not authorize the parking or waiting of vehicles on the road or roads or portions thereof to which the Order applies; vehicles could, of course, wait on that side of a road where waiting is not for the time being prohibited or restricted by the Unilateral Waiting Order, but they would do so merely in pursuance of the common law rights of reasonable user of highways and would be subject to the law as regards obstruction, etc., and, of course, to the provisions of the regulations which are the subject of this article.

## SCHOOL UNIFORM: GRANTS AND DISCIPLINE

[CONTRIBUTED]

Under s. 81 of the Education Act, 1944, local education authorities are empowered:

(a) To defray such expenses of children attending county schools, voluntary schools, or special schools, as may be necessary to enable them to take part in any school activities;

(b) To pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable;

(c) To grant scholarships, exhibitions, bursaries, and other allowances in respect of pupils over compulsory school age, including pupils undergoing training as teachers.

In this article it is proposed to examine the administration of uniform grants and maintenance grants for secondary school children, with special reference to the London area, and to discuss the related topics of uniform and discipline. The first point to note about these grants is that they are based on hardship or low income, and therefore the majority of parents are automatically excluded from participation in the scheme of financial aid. In London, uniform grants are payable to successful applicants twice during the ordinary school life of the children concerned, normally at the ages of eleven (on admission to a secondary school) and thirteen. The uniform grants income scale is low: thus a married man with one child earning over £5 a week is ineligible for a grant for that child; if he has two children he must earn less than £6 a week to qualify, and so on. Moreover, assessments are based on total gross income including family allowances, sickness and unemployment benefit, national

assistance, income from property or investments, retirement pensions and, in fact, income from any source whatsoever, subject to certain limited and defined exceptions. All income has to be verified, either by the employer or by the organ of the State providing it, such as the National Assistance Board, Ministry of Pensions and National Insurance, and Ministry of Labour and National Service. In the case of self-employed persons, a certified statement of accounts and the latest income tax assessment notice must be forwarded to the divisional education office dealing with the application. Allowances are made for excessive rent and war disability pensions, but not for travelling expenses and the cost of living.

As can be readily imagined, the majority of the recipients of uniform grants in London are living on national assistance. When assessments have been completed, the maximum grant that can be paid is the sum of £5, nor can another uniform grant be made until two years have elapsed. Grants of £4 and £3 can also be made according to the fluctuation of "net" income between £5 a week and £4 a week or less. "Net income" here means the gross income less a deduction of £1 for every dependent child after the first. Such items as national taxation, super-annuation deductions, and the general rise in the cost of living since the War are disregarded. The scale has not been revised since it was first introduced in 1946. Uniform grants are therefore a mere speck of assistance to the most needy. With the increasing tendency of head teachers, including heads of secondary modern schools, to introduce school uniforms, the inadequacy of the grants can be recognized. Their limitations

are felt the more keenly in the case of grammar schools, particularly the voluntarily aided grammar schools striving to maintain their ancient traditions. Mention should here be made of the excellent work of the school care committees, run partly on a voluntary basis, in London and elsewhere. These care committees administer the scheme under s. 51 of the Education Act, 1944, whereby local education authorities are empowered to provide clothing to pupils in need of it in schools maintained by them.

Maintenance grants are payable in respect of pupils over compulsory school age, *i.e.*, children over the age of fifteen. The exact dates of eligibility are carefully established each term and there are two scales, one for children under sixteen which is slightly more generous than that for uniform grants, and one for children over sixteen where the income limit for a married man with one child is £450 a year and the maximum grant payable (in cases where the "net income" is £150 a year or less) is £45 a year. The scales have not been revised since 1946, although it is thought that there may be some slight improvement in the next financial year. The assessment rules are similar to those for uniform grants, except that in most cases a year's annual income is taken, whereas six months is the normal period for uniform grants. A period of three months only can be taken in cases of hardship, which are now tending to become the rule rather than the exception, at any rate in the cases of pupils under sixteen. Payments are made on a terminal basis, subject to a certificate as to satisfactory school attendance from head teachers. Maintenance grants are payable mainly to pupils attending grammar or central schools, as the great majority of secondary modern pupils leave school on attaining the statutory school leaving age. Children need not remain at school, whether it be grammar, central, technical, or modern, after the end of the term in which they reach the age of fifteen, or, if their birthdays fall in the holidays, the end of the previous term.

The scale of maintenance grants at present payable is reflected in the increasing proportion of "premature leavers" from grammar, central, and technical schools, whose head teachers normally expect their pupils to remain at school at least until the age of sixteen. In the case of grammar schools courses are generally provided until the age of eighteen, although some admit pupils at the age of eleven on the understanding that they will remain only until the age of sixteen. The word "understanding" is used advisedly, since in London parents sign a form of undertaking as to the duration of the course. Unfortunately the undertaking provides no penalty on breach, and is in any event unenforceable. On the other hand, some local authorities do provide for a monetary penalty (*e.g.*, £5) on breach of an enforceable agreement. The rising cost of living since 1946 has encouraged greater numbers of parents to withdraw their children from all types of schools as soon as they reach the statutory school leaving age, and even a £5 penalty is not always an adequate or effective deterrent. The inadequacy of the scales and the rising cost of living cannot be gainsaid, but the matter cannot be left there. Is it too much to say that there has been a lowering of the sense of parental responsibility of late, which has made its own peculiar contribution to this problem? It is noteworthy that in the Labour Party's policy statement, "Challenge to Britain," the following paragraph appears under the heading of Education:

"Labour believes that financial difficulties should not prevent any child from continuing at school after the age of fifteen. At present there are big differences from area to area in the maintenance allowances. We shall correct this by laying down a standard allowance to be paid to those in need by the local education authorities, the entire cost to be borne by the central government."

It has been noticed that the rules of assessment for both uniform and maintenance grants are similar. The shadow of the auditor is ever present, and little discretion is left to education administrators working within the framework of financial limitations, however humane their instincts and approach may be. But it can be said that, in the case of most education authorities and particularly in London, the interests of the child are considered to be paramount, and this is illustrated in the methods of dealing with certain aspects of family law. Where an applicant is divorced, a grant will be made only to the parent having the custody of the child (generally the mother) and any maintenance awarded by the court is assessed as part of the income. That is in accordance with the law, but the path is not always so straight in cases of separation. Where an applicant is legally separated by order of the court, the same rule relating to custody naturally applies. The situation is otherwise with regard to what is known as mutual separation. Applicants sometimes produce "Separation Agreements" which have been drawn up in solicitors' offices: these are of little use and doubtful validity. Where separated couples are still in touch with each other, a practice has developed with some authorities of accepting signed statements from both parents as to the amount of money contributed by the father to the mother for her own and the children's maintenance. Where the mother of a child who might be eligible for a grant states that she has been deserted but is not divorced and has no court order, a signed statement to the effect that the whereabouts of her husband are unknown to her can be obtained and assessment made on the basis of her income alone. Where a mother has a court order for maintenance but the husband or putative father has not kept up the payments, verification can be obtained from the court and assessment made solely on the mother's income. In all the last three cases the mind of a county treasurer or auditor will postulate the possibility of collusion. In the absence of proof, which is exceedingly difficult to obtain, education committees and administrators, to their credit, put the welfare of the children first. Where a child is illegitimate and there is no court order for maintenance against the putative father, the mother's income is taken as the sole parental income on her signed statement that she has no other source of income. Orphans, unless legally adopted or maintained by trust or charitable funds, are eligible for maximum grants and the income of relations *in loco parentis* is disregarded.

Maintenance grants are used to provide clothing for the pupils concerned and this naturally takes the form of school uniform in most cases. It should be mentioned, however, that school uniform is not compulsory in local education authority schools, although the majority of such schools encourage their pupils to wear a particular uniform and most of them in fact do so. The question of school discipline can be invoked, but the issue is not always clear cut and, at times, becomes confused. It is clearly established, in London at any rate, that a headmaster or headmistress is not within his or her rights in excluding a pupil from school merely because he or she is not wearing school uniform. Some head teachers may not realize this, but if they were to put the matter to the test and the parents concerned were to protest to the authority the situation would be brought home to them. On the other hand, it is equally clear that a head teacher has certain disciplinary powers regarding the dress of pupils. In April of this year the governors of a school in the Midlands excluded four girls for wearing ear-rings and were supported in their action by the county council. As was stated at 117 J.P.N. 275, local education authorities are justified in seeking to educate the coming generation, but it is a pity to interfere with the harmless vanity of adolescents. It is inevitable that we consider, in this connexion, the recent case of *Spiers v. Warrington*

*Corporation*, where a schoolgirl aged fourteen was sent to school in slacks, with the expressed object of keeping her warm because she had had rheumatic fever. The headmistress told her that it was against the school rules to wear slacks, but that if she produced a medical certificate to say that slacks were necessary the rule would be waived. No such note was produced and whenever the child went to school in slacks she was sent home. Mr. Spiers was convicted under s. 39 of the Education Act, 1944, for failing to send his daughter to school, but the conviction was quashed on appeal. The Divisional Court allowed the appeal of the local education authority, holding (1) that as s. 17 (3) of the Education Act, 1944, provided that every secondary school should be conducted in accordance with the articles of government, and since in the present case the articles provided that the headmistress should control the internal organization and discipline of the school, she was entitled to say that Elizabeth Spiers could not be received at school in slacks when there was no compelling medical reason for it. (2) Section 39 of the Education Act, 1944, provided that the only excuses for not sending a child to school were "sickness or any unavoidable cause" and did not enable it to be found that any "reasonable cause" sufficed, as it might have done under s. 49 of the old Education Act, 1921.

This decision is a notable one and raises several important points. The issue here was not whether a child should conform to a particular pattern of uniform but whether she should be allowed to depart from normal standards of dress against the

wishes of the headmistress. A fair measure of agreement can probably be reached on the proposition that a headmistress should be responsible for the discipline of her school as well as for its curriculum. The question then arises, does responsibility for discipline include the power to regulate the dress of pupils, at least in a negative or prohibitive sense? If the answer is in the affirmative then it follows that the headmistress' action was justified: the fact that her decision might be attacked in some quarters as old-fashioned is irrelevant. The *ratio decidendi* of the case is to be found in the first leg of the decision, which demonstrates that under the articles of government of this particular school the headmistress should control its internal organization and discipline. The learned judges, including the Lord Chief Justice, considered that such control permitted the exclusion of a girl dressed in slacks when there was no compelling medical reason for it. It is submitted that more could have been made of the absence of a medical certificate, coupled with persistent refusal to comply with reasonable requests. The headmistress does not appear to have acted as a martinet, since she told the child that it was against the school rules that slacks should be worn but that if she produced a medical certificate to say that they were necessary the rule would be waived. Apparently, no attempt was made by the parents to obtain such a certificate, and if the headmistress or local authority concerned had retreated on this issue, the discipline of the school would have been seriously undermined.

R.E.C.J.

## WEEKLY NOTES OF CASES

### QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Byrne and Parker, JJ.)

January 27, 1954

#### R. v. HIGHGATE JUSTICES. *Ex parte* PETROU

*Clubs—Summons for striking off—Penalty imposed under guise of costs—Certiorari.*

APPLICATION for order of *certiorari*.

At Highgate magistrates' court ten summonses were issued against the manager of a club, alleging that he had permitted the consumption or sale of intoxicating liquor outside the permitted hours. The justices convicted, and ordered payment of a fine of £10 and two guineas costs on each summons. They were informed by the prosecution that the costs amounted to twenty-one guineas. They then heard a summons against the applicant, a Mrs. Petrou, who was the secretary and landlady of the club and was summoned to show cause why the club should not be struck off the register of clubs. They ordered her to pay £100 costs, and she obtained leave to apply for an order of *certiorari* to quash the order.

*Held*, that the justices had inflicted a penalty on the applicant under the guise of costs, and, as they had acted improperly in so doing, *certiorari* must issue and costs against them would be awarded.

Counsel: *Norman King* for the applicant; *S. A. Morton* for the justices.

Solicitors: *A. L. Philips & Co.*; *Sir Clifford Radcliffe*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

January 25, 1954

#### PLUNKETT v. ALKER

*Education—School attendance—Child infested with vermin—Liability of mother—Education Act, 1944 (7 and 8 Geo. 6, c. 31), s. 54 (6), s. 114 (1).*

CASE STATED by Liverpool stipendiary magistrate.

At the Liverpool stipendiary magistrate's court an information was preferred by the respondent, Mr. Alker, against the applicant, Mrs. Catherine Plunkett, as the parent of a child named Christopher Plunkett, a pupil at a school managed by the Liverpool Corporation, "whose person, after cleansing under the order of the medical officer of health had been carried out, was again found to be infested with vermin while in attendance at the said school", it being alleged that the condition of his person was due to neglect on the appellant's part, contrary to s. 54 (6) of the Education Act, 1944. The magistrate found that the appellant was guilty of the neglect, convicted her, and fined her 5s. She appealed on the ground that under s. 54 (6) the father was the parent responsible.

By s. 54 (6) of the Act: "If, after the cleansing of the person or clothing of any pupil has been carried out . . . his person or clothing is again found to be infested with vermin . . . at any time while he is in attendance at a school maintained by a local education authority . . . and it is proved that the condition of his person or clothing is due to neglect on the part of his parent . . . the parent . . . shall be liable on summary conviction to a fine not exceeding twenty shillings." By s. 114 (1): "'Parent', in relation to any child or young person, includes a guardian and every person who has the actual custody of the child or young person."

*Held*, that, in s. 114 (1), the legislature was drawing a distinction between actual custody and legal custody; unless a contrary intention appeared, the Interpretation Act, 1889, required the singular to be read as the plural; and, therefore, "parent" in s. 54 (6) should be taken to mean "parents" and to include the mother. The magistrate had, therefore, come to a right conclusion and the appeal must be dismissed.

Counsel: *R. J. H. Collinson* for the appellant; *D. B. McNeill* for the respondent.

Solicitors: *W. F. Foster, Hedge & Clare*, for *A. Stephen Cawson*, Liverpool; *Cree, Godfrey & Wood*, for *Thomas Alker*, Town Clerk, Liverpool.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

#### SHAXTED v. WARD

*Education—School attendance—Failure to attend school regularly—School within "walking distance" of child's home—"Nearest available route"—Safety of route irrelevant—Education Act, 1944 (7 and 8 Geo. 6, c. 31), s. 39 (5).*

CASE STATED by Kent justices.

At a court of summary jurisdiction an information under s. 39 (1) of the Education Act, 1944, was preferred by the respondent, Ward, against the appellant, Bertie Herbert Shaxted, the parent of a child aged six, who was a registered pupil at Preston County Primary School, alleging that the child had failed to attend the school regularly. The child's home was less than two miles from the school. The justices found that the route on which the child would have to go was safe for children to use, if escorted, but that an escort was desirable for small children on part of the road near the school owing to a dangerous crossing. By s. 39 (2) of the Act: "a child shall not be deemed to have failed to attend regularly at the school . . . (c) if the parent proves that the school . . . is not within walking distance of the child's home . . ." By subs. (5): ". . . 'walking distance' means, in relation to a child who has not attained the age of eight years, two

miles . . . measured by the nearest available route." The justices convicted and fined the appellant, who, on appeal, contended that the route was not "the nearest available route" because part of it was unsafe for unescorted children.

*Held*, that, if there was a route along which the child could walk and which did not exceed two miles in length, it was "the nearest available route," distance and not safety having been adopted by the legislature as the test. The justices had, therefore, come to a right conclusion and the appeal must be dismissed.

Counsel: *Van Oss* for the appellant; *Thesiger, Q.C.*, and *Jupp*, for the respondent.

Solicitors: *Jacques & Co.*, for *Girling, Watson & Bailey*, Margate; *Sharpe, Pritchard & Co.*, for *Gerald Bishop*, Maidstone.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

#### Re EAD

*Police—Pension—Report of medical referee—Appeal to quarter sessions—Competency—Police Pensions Act, 1948 (11 and 12 Geo. 6, c. 24), s. 5—Police Pensions Regulations, 1949 (S.I. 1949, No. 1241), reg. 45 (1).*

APPEAL under s. 5 (3) of the Police Pensions Act, 1948.

The appellant, John Raymond Ead, an ex-police officer, applied for a pension, after being invalidated out of the force, for a disability which, he alleged, was due to an injury received in the execution of his duty. The claim was referred by the police authority, under

reg. 43 (2) of the Police Pensions Regulations, 1949, to a qualified medical practitioner, who disallowed it. The appellant then appealed under reg. 44; a medical referee was appointed by the Secretary of State; and he decided that the disability was not due to any injury received in execution of duty. By s. 45 (1) of the regulations: "A court hearing an appeal under s. 5 of the Act . . . may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the decision of that authority to him for re-consideration in the light of such facts as the court . . . may direct, and the medical authority shall accordingly re-consider his decision and, if necessary, issue a fresh certificate which, subject to any further re-consideration under this paragraph, shall be final." The appellant appealed from the medical referee's decision to the County of London Sessions on general grounds, but quarter sessions refused to entertain the appeal on the ground that their jurisdiction was limited to deciding whether the evidence before the medical referee was inaccurate or inadequate. The appellant appealed to the Divisional Court.

*Held*, that no general right of appeal was given by s. 5 of the Act of 1948, and there was no right of appeal from the decision of the medical referee, except in so far as reg. 45 provided it. The appeal must, therefore, be dismissed.

Counsel: *Du Cann* for the appellant; *J. M. G. Griffiths-Jones* for the respondent.

Solicitors: *Ludlow, Head & Walter*; *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

## LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 14.

### SPEEDING. A CONVICTION UPON UNUSUAL EVIDENCE

A thirty-two year old company director pleaded not guilty when charged at Dudley Magistrates' Court early last month with driving a saloon car in a built-up area at a speed exceeding thirty m.p.h. contrary to s. 1 of the Road Traffic Act, 1934.

For the prosecution, a police sergeant gave evidence that he was on foot patrol with another police sergeant in the Broadway, Dudley, a built-up area, when he heard a car behind him which sounded as though it was being driven at high speed. He turned and saw a car travelling in the same direction as himself at a speed which he estimated at being not less than fifty-five m.p.h. Witness was able to take the number of the car, traced the vehicle and later the same day saw the defendant and informed him that he would be reported for a summons. Witness, in cross-examination, stated that he had been attached to a motor patrol for fifteen years and that it was not the first case of its kind in which he had given evidence. In reply to a further question witness stated that it was possible for him, when walking along, to estimate the speed of a vehicle going away from him.

The police sergeant who had been on foot patrol with the first witness, said that he saw the car for 200 to 250 yards and estimated its speed at fifty m.p.h. He said he had given evidence before in a similar case.

The defendant gave evidence that he had been driving without a complaint for fifteen years; his speed in the road in question was never more than thirty m.p.h.

Defending solicitor, who mentioned that it was the first time in forty years' experience that he had heard a charge of this nature based solely on the evidence of two police officers walking on a pavement, speaking of the prosecution's first witness said "If he can judge speed so accurately he can become chief of the general staff without any difficulty. Anyone with any experience knows it is impossible so to do."

The Chairman stated that the bench accepted the evidence of the police officers owing to their great experience and the defendant was found guilty and fined £1.

#### COMMENT

The Chief Constable of Dudley, to whom the writer is greatly indebted for this report, states that the case caused a lot of interest locally, and the writer finds this easy to believe, for it would be contrary to the existing practice if courts were invited throughout the country to convict in speeding cases, upon estimates of speed put forward by police witnesses in circumstances similar to those outlined above.

It will be recalled that by s. 2 of the Road Traffic Act, 1934, an amendment was made to s. 10 of the Road Traffic Act, 1930, and it was provided that a person charged with speeding should not be liable to conviction solely on the evidence of one witness to the effect that in the opinion of the witness the person charged was driving at a speed in excess of the speed limit. It has been decided in a number of cases

that there need not necessarily be more than one witness but the evidence of that witness, if merely speaking as a matter of opinion, must be supported by further factual evidence, e.g., the reading of a speedometer.

In this case, of course, the supporting evidence took the form of a further expression of opinion by a second witness.

It is well-known that widely differing views are held as to the possibility of a pedestrian accurately estimating the speed of a passing car. The writer believes that it is quite possible for anyone who has had reasonably long experience in driving cars, to be able to say, when a pedestrian, that a car passing him is travelling at a speed considerably greater than thirty m.p.h., but the writer doubts very much whether a pedestrian, however experienced as a motorist, is able to state accurately whether a car passes him at fifty, fifty-five or sixty m.p.h. It is common knowledge that fifty m.p.h. in a small car seems very much faster than seventy m.p.h. in a big car, and similarly a pedestrian who sees cars flash past him may often be misled by such matters as the size of the car, the noise emanating from the engine, etc.

On balance the writer thinks that readers will be of the opinion that while in the case reported above there is no reason to cavil at the decision reached by the court (no notice of appeal was given by the defendant), all responsible people will agree that it is undesirable that prosecutions should be based upon such evidence except in very rare cases.

R.L.H.

No. 15.

### AN AUDACIOUS ACT

A thirty-two year old cable layer appeared before the Dudley magistrates on January 15 last upon a charge of attempting to obtain by a certain false pretence the sum of £3 from a bookmaker.

For the prosecution, it was stated that the bookmaker on a night in December was carrying on his business on a stand at the Sports Stadium, Dudley, where a greyhound meeting was in progress. Just before the start of a race when the bookmaker was very busy, the defendant tendered to him what at first glance appeared to be a £5 Bank of England note, and the bookmaker at first thought that it was. On it was printed "Meet Mr. Callaghan. I promise to pay Slim Callaghan the sum of £5." And the note was signed "Garrick Theatre." Defendant asked for a £6 to £2 bet on a certain dog but the bookmaker noticed that the note looked odd and told defendant so, at the same time trying to get it from him. The bookmaker did not handle the note and the defendant put it in his pocket and walked off.

The bookmaker reported the facts to a police constable who was on duty at the stadium and together they searched for the defendant in the crowds and found him in due course. The police constable questioned defendant about the matter and he replied "Yes, I have torn it up." The constable told defendant he was not satisfied with his explanation and asked if he had any objection to being searched. Defendant was taken to the manager's office and there produced, from the lining of

his jacket, an imitation £5 note. He said "I'm sorry. It's stage money."

Defendant later made a statement that he went to the local theatre to see "Meet Mr. Callaghan" and picked up from the floor one of the notes which was being used to advertise the show. On the date of the offence he was short of money and tried to pass the note to the book-maker.

Defendant, who pleaded Guilty to the charge, said he was sorry and was fined £5.

#### COMMENT

The writer characterizes the defendant's offence as audacious for owing to the courtesy of the Chief Constable of Dudley, to whom the writer is greatly indebted for this report, the writer has seen a photostat copy of the "bank note." It is fair to say that the chance of it deceiving anyone with reasonable eyesight is remote, for apart from the fact that it is approximately the same size as a £5 note and bears the word "five" on it, it bears practically no resemblance to a Bank of England note.

It will be recalled that whereas a man cannot be convicted of obtaining money by false pretences unless the prosecutor had been induced to part with money by means of a false pretence, the same principle does not apply in the case of an attempt and it matters not that the mind of the prosecutor has not been influenced by the false pretence.

This principle was finally settled in *R. v. Light* (1915) 79 J.P.N. 113 and Lord Reading, C.J., in that case emphasized that the Court was following the earlier decision of *R. v. Hensler* (1870) 34 J.P. 533.

R.L.H.

## MISCELLANEOUS INFORMATION

### LOCAL GOVERNMENT SUPERANNUATION COMMISSIONERS OF CROWN LANDS DESIGNATED AS PUBLIC BOARD FOR INTERCHANGE PURPOSES

Mr. Harold Macmillan, Minister of Housing and Local Government, has designated the Commissioners of Crown Lands as a Public Board for the purposes of the Superannuation (Local Government and Public Boards) Interchange Rules, 1949.

These rules make pensionable employment in the local government services interchangeable with pensionable employment under any public or semi-public body that the Minister may designate as a public board within the meaning of the rules. Their intention is to provide these exchange facilities in instances where the superannuation benefits provided by the Local Government Superannuation Acts, 1937 to 1953, and by superannuation schemes administered by Local Act authorities are substantially similar to the benefits provided by pension schemes administered by nationalized industries and other public or semi-public bodies.

Although the designation of the Commissioners of Crown Lands as a public board is dated January 6, 1954, its effect is retrospective to February 4, 1948.

### APPROVED PROBATION HOSTEL AND HOME FLAT RATES

In H.O. Circular No. 2/1954, reference is made to Home Office Circular No. 13/1953 of January 13, 1953. The Secretary of State has had under consideration the approved Probation Hostel and Home flat rates to be charged in the financial year beginning April 1, 1954, in respect of persons under the supervision of a probation officer and required by a probation or a supervision order to reside in an approved probation hostel or an approved probation home.

Owing to increases in costs, it has been found necessary to raise the weekly flat rates for the year beginning April 1, 1954, by 1s. 9d., to £1 16s. 9d., for hostels and by 7s. 0d., to £3 1s. 3d., for homes.

The increased costs are attributable mainly to the higher salaries now payable in accordance with the recent recommendations of the Standing Joint Advisory Committee for Staffs of Children's Homes and to employers' contributions in connexion with arrangements expected to be made under s. 15 of the Local Government Superannuation Act, 1953. Managing Committees of the hostels and homes have been asked to effect such economies as are consistent with proper standards and to avoid all expenditure which is not strictly necessary. Every effort will continue to be made by the Home Office to secure economical administration of the establishments.

### ROAD ACCIDENTS—NOVEMBER AND DECEMBER, 1953

Casualties on the roads of Great Britain in December reached a total of 20,972. This is 2,514, or nearly fourteen per cent. more than in December, 1952.

These figures represent the largest percentage increase of any month in 1953 over the corresponding month in 1952 and the total is the highest December total for which the Ministry of Transport and Civil Aviation has records. In drawing comparisons, however, it should be remembered that since 1934, when road accidents in December reached their previous highest recorded peak, traffic has increased and

the number of vehicles has more than doubled. In the last twelve months alone vehicles have increased by nearly 400,000.

There were 582 deaths from road accidents in December, 1953, an increase of 105 on the corresponding month of 1952; 5,420 serious injuries, an increase of 813; and 14,970 slight injuries, an increase of 1,596. These figures are subject to minor adjustments.

#### TOTAL FOR THE YEAR 1953

Total road casualties for 1953, including the provisional figures for December, numbered 226,520, or nearly nine per cent. over the total for the previous year. The number of deaths was 5,070, an increase of 364.

The number of seriously injured during the year was 56,452 and the slightly injured 164,998; compared with 1952 the figures for these groups show increases of 6,101 and 12,043, respectively.

#### THE WELFARE STATE

The Shaftesbury Society has now published the seventeenth Shaftesbury Lecture which was delivered by Sir Alfred Denning in October. The subject was "The Christian Approach to the Welfare State."

The address was an appreciation and a warning. Lord Justice Denning treated his subject with the impartiality that one expects from a Judge, always putting both sides of the matter without seeking to emphasize one rather than the other.

The speaker set out to show that the welfare state has come into being by a true application of Christian principles, but that there is a danger of its being mishandled and abused by people who have no knowledge of those principles and seek only their own advantage. Dealing with the progress of social legislation, beginning with the earliest Factories Act, Sir Alfred Denning referred to the great work of the seventh Earl of Shaftesbury who was inspired throughout his life by his religious belief. Lord Shaftesbury saw that preaching and teaching alone would not effect the necessary improvements in the lot of those who suffered under the *laissez-faire* system which prevailed, and that Acts of Parliament were indispensable, and to that end he directed his energies. In so doing he set the pattern for the welfare state.

Shaftesbury's follower, W. E. Forster, took up the question of education, and promoted the famous Act of 1870, which was followed by a number of other statutes. In the opinion of Sir Alfred Denning, the way that the administrators handle education is one of the crucial tests of the welfare state. There should be freedom in education, in sharp contrast to the propaganda methods of the totalitarian state, and the freedom of the English Universities he regards as a hopeful sign.

Turning to insurance, the speaker said that we had now the most comprehensive system in the world, and allied to this was a national health service. "There is much good in all this, but there is also much danger. It is a danger which was foreseen by Lord Beveridge when, in 1942, he made his famous report on social insurance. 'Social security,' he said, 'must be achieved by co-operation between the state and the individual . . . the state in organizing security should not stifle incentive, opportunity and responsibility.' He did not add, but I would add, that if the result of these social services were to dry up the springs of Christian charity and help to breed selfishness and ingratitude among the people, then social security would be bought at too high a price." Sir Alfred expressed a fear that the real insurance principle was being lost sight of. "Many beneficiaries nowadays have come to regard it as the duty of the state to do everything for everybody."

The speaker voiced the feelings of a great many people when he pointed to the danger that doctors and dentists, employed by the state, might be tempted to do less for their patients with the result that the old happy relationship might disappear. Also, he lamented the transfer to the state of so many voluntary homes and hostels. "Love is now replaced by efficiency." He did not doubt that the institutions were well run today but felt we were losing something if the effect was to reduce the amount of voluntary charitable service.

Regarding the provision of free legal aid and advice, Sir Alfred said that what he wanted to emphasize was that the scheme depended for its success on the members of the profession conducting their cases and their work in accordance with the high principles of the profession which had always been set before them. Nowadays if the lawyer is paid by the state there could be a temptation for him to advise mitigation or to continue it, when it would be possible to arrive at a proper settlement. He did not say that lawyers were doing this, he only pointed to the danger. "The scheme proceeds on the assumption that they will approach their cases in accord with the great principles of the profession, which are at bottom Christian principles."

Concluding, Sir Alfred Denning said "The modern approach is after this fashion: 'It is the State, not God, who provides what is necessary for man. Let everyone get what he can out of the State. Each for himself, not for his neighbour.' . . . We must take up the challenge. We must return to the faith of our forefathers. It is the only thing that can save us."

## MAGISTERIAL MAXIMS, No. XIV

It has Long been the Custom of him who Compiles these Trifles to Commence his Tale by Reference to Days Long Ago, but this Present Treatise shall, for the sake of Change and Variety, deal with the Future, and Tell of a Certain Clerk to Justices, and the Misfortune which shall Befall him.

Well-versed in the Intricacies of the Licensing (Consolidation) Act, 1910—"REQUIESCAT in PACE"—he but Barely Scanned that (Almost) Monumental later Statute, Enacted by a Benificent Parliament in 1953, on the Same Subject Matter, assuming, with some Contempt that as it was but a Paste and Scissors Affair, there was but Little or Nothing that he Might learn therefrom.

The Annual Brewster Sessions for his Division were Duly Held within the Prescribed Time in February and the Clerk duly Advised his Licensing Committee to appoint the Day, Hour and Place of the Adjourned Brewster Sessions, which as a Dutiful Committee and Relying on the Clerk for what was a Legal Business, they did, appointing the Thirteenth day of March as their Adjourned Sessions and Announcing the Fact to the Press, Publicans, and Public assembled, as Seems Customary at all Licensing Meetings, in Packed Ranks In and Around the Court-house.

Time Duly Passed, until it was the Fifteenth day of March when, by a Rare and Remarkable combination of Circumstances, the Worthy Clerk had a Few Moments to Spare between arriving at his Office at 8.45 in the forenoon and departing (with a Case full of work) for his Home at 6.30 in the afternoon.

Idly toying with the Pages of a Well Known Yellow Covered book on his Desk, he suddenly Espied the words "The General Annual Licensing Meeting shall extend over at least two days," followed, a Paragraph or so Later by further Words, "The Licensing Justices may, at their General Annual Licensing Meeting adjourn the meeting to a THIRD or subsequent day."

With a numbed feeling he Realised that, on his Advice, there had Never Been, in Law, a Second Session of his Licensing Meeting and that Through him, his Justices had Adjourned such Meeting to a Third Day without the Formality of a Second Day intervening, and whilst he Tried, in Vain, to puzzle out the Position mentally, his Head was filled with Conflicting Emotions, the Nature of which will no doubt suggest Themselves to the Reader without detailed Elaboration.

Whilst his Feelings as an Ordinary Man led him to think of the Phrase "A Rose by an other name would smell as Sweet," the Gorge of the Lawyer rose within him as he Appreciated that the Letter of the Law had Not been Observed by him who was a Servant of the Law.

This being a Tale of the Future, withal, written in the Past Tense for Convenience, its End and Consequence are still Dark and Unseen in the Lap of the Future, but may Those who Read remember the writing of Ovidius Heroides: "Coepisti melius quam desinis" an Amplified and Satisfactory, though thoroughly Inaccurate English Rendering of which may be "Though a Good Start is Half the Battle, it is the Final Result that Matters", or "Per Varios casus, per tot discrimina rerum" a correct translation of which is "Through Chance, Through Peril lies our Way," a Magisterial Maxim which Every Clerk to Justices would do Well to Engrave in Letters of Brass over the Outer Door of his Chambers, and in Words of Fire on his Inner Heart, and Act Accordingly with Proportionate Caution and Due regard for What is What: Provided, always, that he can Find the Time so to Do. AESOP II.

Preferring an indictment doesn't mean that the prisoner seeks To avoid being tried by the Beaks. J.P.C.

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## PERSONALIA

### APPOINTMENTS

Sir Kenneth O'Connor, Chief Justice of Jamaica, has been approved by Her Majesty to succeed Sir Hector Hearne on his retirement as Chief Justice of Kenya.

Mr. John Austin Weston, assistant solicitor to Chester city council, has been appointed senior assistant solicitor to Derby corporation.

Chief Superintendent W. H. Linaker, who has been in charge of Ashton-under-Lyne police division for two years, has been promoted to the rank of an assistant chief constable for Lancashire.

### RESIGNATION

Mr. Philip Wood, clerk to the justices of Buckingham, Buckingham Borough and Winslow, has resigned for reasons of health. His duties have been assumed by Mr. W. A. Dawson, who is clerk to the justices of Brill.

### RETIREMENTS

Sir Charles George Maby, chief constable of Bristol, is to retire. The son of a police sergeant, Sir Charles has been a member of the Bristol Constabulary for forty-five years, and its chief for twenty-three. In 1927 he was awarded the M.B.E., and later received the O.B.E., C.B.E., King's Police and Fire Services Medal and the Police Good Service Medal. In 1950 he was made a Knight Bachelor, and was accoladed by his late Majesty King George VI.

Mr. L. A. Venables, town clerk of Colne since 1928, is to retire.

### OBITUARY

Mr. William H. Williams, a former county court judge of Merioneth, has died at the age of seventy-seven.

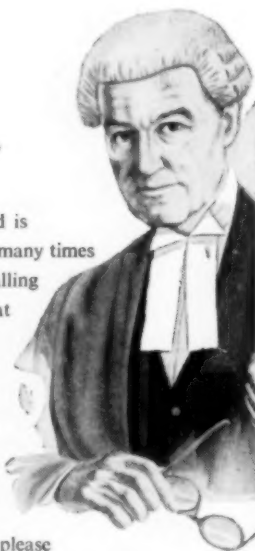
Mr. Henry Gibson Rivington, a partner in Gibson and Weldon, the law tutors, for many years, has died at the age of eighty-one. A specialist in conveyancing and real property, Mr. Rivington edited many legal publications and, with Mr. Clifford Fountaine, instructed thousands of solicitors now in practice.

Col. W. W. Bramwell Jones, the oldest solicitor in practice in Llanelli, has died at eighty-one. He was admitted in 1898.

Mr. Arthur Charles Balls, who retired from the Norfolk Constabulary in the rank of superintendent eight years ago, has died at the age of sixty-seven.

## Legal Aid is One Thing...

...but so often what is wanted is something much deeper. How many times does a solicitor encounter appalling human tragedy—only to find that action is outside his province! The Salvation Army is never compelled to hold a watching brief... and however difficult the situation, always finds some way of helping. Never hesitate to call on The Army in any human emergency—and please remember that a donation or bequest to The Salvation Army is support for Christianity in decisive, daily action.



General Albert Orsborn, 113 Queen Victoria Street, London, E.C.4.

## The Salvation Army

## REVIEWS

*Wilshire's Criminal Procedure*. Third Edition. By H. A. Palmer, M.A., and Henry Palmer, M.A., Barristers-at-Law. London: Sweet and Maxwell, Ltd., 2, and 3, Chancery Lane, W.C.2. Price 22s. 6d. net.

The preface to the new edition, made necessary, like many other new editions, by recent legislation, including the Magistrates' Courts Act and Rules, states that in substance it constitutes Parts V and VI of *Harris and Wilshire's Criminal Law*, 19th edition. It is primarily a book for students, and will serve well for examination purposes, covering as it does procedure before examining justices and at a trial on indictment as well as summary procedure, with chapters also on evidence, appeals and other matters. Like many students' books, it may well prove useful in the office of a solicitor or a clerk to justices. It is admirably concise, but well supplied with references to enactments and decisions.

The statement on p. 28 about informing a person committed for trial on a charge of misdemeanour and not admitted to bail, of his right to apply to a judge, does not mention that r. 9 of the Magistrates' Courts Rules, 1952, has extended this provision in respect of all offences other than treason or murder. The statement on p. 151 that the chairman of a metropolitan juvenile court is a metropolitan magistrate, sitting with two justices, needs amplification, since these courts may and constantly do have a lay chairman.

## THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

### WELSH-SPEAKING MAGISTRATES

Mr. T. E. Watkins (Brecon and Radnor) asked the Attorney-General in the Commons the number of Welsh-speaking magistrates in each of the Welsh counties; and whether he was satisfied that sufficient consideration was given to the appointment of such magistrates in the Welsh-speaking areas of Wales.

The Attorney-General replied that no record was available of the number of Welsh-speaking magistrates in each of the Welsh Counties. When making appointments to the Commissions of the Peace for those Counties, the Lord Chancellor always endeavoured to select persons with a knowledge of the Welsh language to staff the magistrates' courts in the Welsh-speaking areas.

### OBSCENE LITERATURE

Mr. G. B. Finlay (Epping) asked the Secretary of State for the Home Department whether he was aware of the wider sales of obscene literature; and whether, in view of the serious anti-social results of that, he would circularize chief constables recommending increased police vigilance in the matter.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, replied that he was sure the police were fully aware of the need for vigilance in that matter, and he did not think that any action was called for on his part.

### ARRESTED PERSONS

Miss M. Herbison (Lanarkshire N.) asked the Secretary of State for Scotland the results of his inquiries into the action of the police against two of her constituents which had been brought to his notice.

The Secretary of State for Scotland, Mr. J. Stuart, replied that the police acted in accordance with s. 4 of the Trespass (Scotland) Act, 1865, which empowered them to arrest and detain in custody anyone found in the act of committing an offence, provided he was brought before a magistrate on the following day. That procedure was not, however, obligatory, and he had brought the matter to the notice of the Chief Constable.

Miss Herbison: "Is the Minister aware that these two men were given no prior warning from the police, that they were kept a whole night in the cell, that bail was refused and that the following day they were fined only 7s. 6d., which showed that their crime was not a very great one? Instead of drawing this s. 4 to the notice of the police, would not the Secretary of State inform all police authorities in Scotland that he deprecates very much indeed what happened to these two citizens, who were treated worse than the most hardened criminals?"

Mr. Stuart: "No doubt the fact that this attention has been drawn to the matter today will percolate throughout Scotland."

## PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, February 4, 1954

CURRENCY AND BANK NOTES BILL, read 2a.

## CORRESPONDENCE

The Editor,  
Justice of the Peace and  
Local Government Review.

5th January, 1954.

DEAR SIR,

### SMALL TENEMENTS RECOVERY

Having read the contributed article on the Small Tenements Recovery Act, 1838, at 116 J.P.N. 679, it would seem that a statement contained in the eighth paragraph on p. 680 is perhaps a little misleading. I would submit that it is not necessary for the landlord or his agent personally to serve the statutory notice under s. 1 of the above Act, for in the terms of that section it is open to the landlord or his agent "to cause" the person so neglecting or refusing to quit and deliver up possession "to be served" with such notice.

It would also seem not to be necessary for the local authority's resolution specifically to authorize its officer to proceed under the Small Tenements Recovery Act, 1838. If an "agent" is to be specially authorized to act he is to be authorized "in the particular matter," i.e., in the matter of the recovery of possession of a house. It will be seen that omission of specific reference to the Act of 1838 would enable the same resolution to be used for proceeding either under that Act or in the County Court.

Perhaps your contributor would honour me with his observations upon the above submissions.

Yours faithfully,

G. J. ROWE.

Council Offices,  
Surbiton.

[Mr. Graeme Finlay writes, with reference to this letter :

"Paragraph 1. I agree with Mr. Rowe. I think the word "serve" is a misprint for the word "give" in the third line of the seventh paragraph on p. 680, *supra*.

Paragraph 2. The form of special authority given in the text is only an example and is expressed to be such. There is certainly nothing wrong in including it if proceedings are contemplated under the Act of 1838 exclusively, but if proceedings are contemplated in another forum then appropriate amendment should be made or the reference be omitted."

We may point out, also, that in the case cited in the article the landlord did not appear. The case was successfully argued by counsel for the ex-tenant solely on the footing that the solicitor was not an "agent" as defined in the Act, and so could not himself serve notice. Solicitors do not act in these matters without instructions, and the result might have been different if the landlord had put forward the argument that he (and not an agent) had caused the notice to be served through the solicitor or solicitor's clerk.—*Ed., J.P. and L.G.R.*

### LINES WRITTEN ON WATERLOO BRIDGE

We are older and wiser men,  
A lot of water has flowed under the Bridge since then,  
And come to think of it even the Bridge itself has gone  
And this is an entirely new Bridge we're standing on.

J.P.C.

### ENQUIRY

Why do the papers devote such space  
To the unpleasant kind of case,  
And yet at the same time  
Deplore the increase in crime ?

J.P.C.

### LIFE

He fielded very badly and he missed an easy catch  
But then he batted brilliantly and really won the match.  
You'd think that in the circumstances the former wouldn't matter  
But people will remember it and quite forget the latter.

J.P.C.

## LOCAL COLOUR

A manifesto issued by the Co-operative Party, for discussion at its annual conference, proposes revolutionary changes in the structure of local government. The basis of these proposals is that there should be an "all purposes" authority in every area ; in populous districts the powers of the county boroughs would be extended, and in sparsely-populated places the same powers would be conferred upon "area authorities". To these bodies would be entrusted all the powers now exercised by county councils, county boroughs, regional hospital boards and gas and electricity boards. The county councils would be "abolished".

What arguments there may be in favour of these drastic changes will appear in due course, and we do not desire to anticipate them. From the historical standpoint, however, many voices will be raised in remonstrance against the laying of sacrilegious hands upon the ancient institution of the county, or shire, the traditions of which go back far beyond the Norman Conquest.

Familiar as the subject is to our readers, a brief historical sketch may not be out of place. In Anglo-Saxon times the shire was the administrative division of the country next above the "hundred". It was presided over by the sheriff and the ealdorman ; the latter was originally the "elder" or senior man in the district, and the name is still preserved in the title of alderman to this day. His duties were to command the military forces of the shire, to preside over the *scirgemot* or shire-assembly, to administer the laws and to execute justice. After the Danish Con-

quest these duties passed into the hands of the *jarl* or earl, and it was in the reign of Canute that the great earldoms were first instituted. When the Normans came, they brought with them the equivalent title of *comte* or count, derived from the Latin *comes*—"companion"—that is to say, a companion of, or close attendant upon, the Duke of Normandy. When Duke William became King of England, he abolished the ancient administrative office of earl but retained the name as a title of honour ; the old word "shire" gradually dropped out of use, except in place-names, and the French word *comté* or county was substituted. It was on a county basis that justices were appointed to preserve the King's peace, and each county was represented by two knights to serve in Parliament. Little change was made in these institutions until the Reform Act of 1832 altered the basis of parliamentary representation. In 1888 the Local Government Act for the first time conferred upon an elected body, the county council, most of the administrative functions previously exercised by nominated justices of the peace.

In comparison with this record of honourable antiquity the Co-operative Movement is a mere *parvenu*. It was not until 1821 that Robert Owen succeeded in organizing a co-operative community, employing its own members, providing for education and recreation, and purchasing goods at cost price through its own co-operative store. Rochdale first placed the scheme on a permanent and successful basis by opening membership to all households for a nominal entrance-fee, by charging normal competitive prices and crediting each member with his share of

profit in proportion to his purchases. Enabling legislation, missionary zeal and efficient business management have helped the movement to attain its present popularity and power.

Whenever an assault is made by a modern, highly organized mass-movement upon an institution of ancient foundation, proud of its privileges and traditions but loosely-knit and unwieldy, heads are apt to shake and, ultimately, heads have sometimes rolled, in the process. The Co-operative attack upon the county will doubtless be strenuously resisted, and many a hard battle will be fought, in Parliament and elsewhere, between doughty champions on either side. If the aggressor has a force of millions behind it, and relies upon the weapons of financial retrenchment and business efficiency, the other side may appeal to the honourable antiquity of its institutions, the legendary magnificence of its past, and the historic land-marks in its development. Looking back upon shire and *scirgemot*, ealdorman and sheriff and earl, the county man may well be inspired with a pride and local patriotism which will impel him to do battle for his ancient inheritance, now threatened with extinction at the hands of an upstart power. If he feels the urge and has the will to resist, let him turn to his Chesterton and read again the epic of *The Napoleon of Notting Hill*.

Fifty years have passed since that heroic story saw the light, but its prophetic fervour was never more topical than today. It looked forward to a time when political evolution should have reached its logical conclusion—a drab, dull uniformity of lives and characters and institutions where nothing startling ever occurred. "There was really no reason for any man doing anything but the thing he had done the day before". Into this "vague and depressed reliance upon things happening as they have always happened" there dropped a sudden bombshell. The system of electing a monarch "like a juryman, upon an official rotation list, had worked as satisfactorily as any other system", until the choice fell upon a young man for whom the romance of history and the poetry of everyday things burned with a brilliant light. And his first proclamation after his accession was to translate his dream into reality:

"All those boroughs where you were born, and hope to lay your bones, shall be reinstated in their ancient magnificence—Hammer-smith, Kensington, Bayswater, Chelsea, Battersea, Clapham, Balham, and a hundred others. Each shall immediately build a city wall, with gates to be closed at sunset. Each shall have a city guard, armed to the teeth. Each shall have a banner, a coat of arms and, if convenient, a gathering cry. . . . You will all be summoned together by the Tocsin. . . . If any of you happen to have such a thing as a halberd in the house, I should advise you to practise with it in the garden."

Much of this fantasy was destined to come true when the first Local Defence Volunteers were enrolled in the dark days of 1940, and by no means in London alone. But the strife that G.K.C.'s whimsical imagination envisaged was not armed resistance to a foreign invader, but civil war between the heroic Lord Provost of Notting Hill, with his handful of brave men, and the hosts of North, West and South Kensington, Bayswater and Hammersmith, whose greedy and ambitious leaders desired to drive a new road into the heart of the Notting Hill dominions. There is a fine prophetic picture of a black-out in the streets—a tactical device used with great effect by the defending forces. Chesterton's vivid style is perhaps at its best in describing the abortive conference which preceded the outbreak of hostilities:

"The room was full of a roaring sunset of colour, and the King enjoyed the sight, possible to so few artists—the sight of his own dreams moving and blazing before him. In the foreground the yellow of the West Kensington liveries outlined itself against the dark blue draperies of South Kensington. The crests of these again brightened suddenly into green, as the almost woodland colours of Bayswater rose behind them. Over and above them, the great purple plumes of North Kensington showed almost funereal and black. . . . And the Notting Hill halberdiers, in their red tunics belted with gold. . . . marched and wheeled into position with a startling dignity and discipline."

Chesterton's allegory illustrates the age-old conflict between the drab uniformity of mechanistic forces, on the one hand, and, on the other, the poetry and romance of historic tradition. The battle-picture of the London Boroughs may come to life in the Counties, whose ancient privileges are menaced in our day by the powerful battalions of economic materialism. Therefore let all good county men look to their halberds, raise their emblazoned banners high, and prepare, with stout hearts and sharp swords, to defend a noble heritage with their blood.

A.L.P.

### THE FIRST CASE

The very first brief that I ever was sent  
Was simply to go to the Court to consent.  
I've long since forgotten by whom I was sent it  
Or what it was to which I gaily consented.  
I only remember it really occurred  
That they paid me in fact ten and sixpence a word,  
A rate which I'm bound in all conscience to say  
I have never achieved since that glorious day.

J.P.C.

### NOTICE

A lecture on Criminal Responsibility and Punishment will be delivered by the Hon. Mr. Justice Devlin at University College (Eugenics Theatre), Gower Street, W.C.1, at 5 p.m. on Thursday, March 4, 1954. The chair will be taken by Professor G. L. Williams, Professor of Public Law in the University of London. Admission is free, without ticket.

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## PRACTICAL POINTS

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### 1.—Adoption—Effect on liability of father to maintain infant if mother adopts after divorce from father.

A married woman who has divorced her husband is desirous of reverting to and using her maiden surname, this surname to be assumed and used also by her children of the marriage. It is known that there is no provision in the law whereby entry of a person's birth or marriage can be amended on account of the assumption by that person of a name different from that recorded; but this woman has been advised to make a statutory declaration that a change of surname has been made, and this document will be attached to her birth certificate. She cannot afford the charges for effecting the change by a deed poll, and will rely upon use and reputation.

With regard to the children, she intends to apply for adoption orders, with the view to obtaining new birth certificates. There is a domestic court order in force against the husband. Would the liability of the husband under that order, insofar as the children are concerned, terminate upon the granting of the adoption order? Your views generally would be appreciated. STIGMAT.

Answer.

If the mother adopts the children, presumably with the consent of her former husband, so as to become their only parent, it would seem that by virtue of s. 10 of the Adoption Act, 1950, her former husband's liability to maintain them would cease, and he could get the order reversed. Note in particular the use of the word "exclusively" in s. 10.

### 2.—Gaming—Clubs.

I should be obliged if you would let me know whether an offence against the Gaming Houses Act, 1853, is disclosed under the following circumstances:

Members of a members' club play solo whist, pontoon, nap and banker for money on the club premises on at least one day in every week.

As I see it such card games are unlawful as they are not games of mere skill. TUBAL.

Answer.

It is impossible to express a definite opinion without knowing the facts in more detail, but there appears to be a *prima facie* case if games are played for stakes in which the chances of all who participate are not equal. Banker may certainly be played under conditions which make it unlawful.

See 4 *Halsbury* 519 and in particular the cases of *Jenks v. Turpin* (1884) 49 J.P. 20 and *Daniels v. Pinks* (1931) 95 J.P. 23.

### 3.—Husband and Wife—Neglect to maintain—Husband in Scotland with one child—Wife in England with another child—Proceedings if order as to custody disobeyed.

Husband and wife separate by mutual consent. There is a verbal agreement that husband will pay wife a lump sum in cash, the wife to have custody of both children of marriage, husband to contribute to children's maintenance and have access at week-ends. The last matrimonial home was in England and wife still resides in England. Husband has gone to Scotland taking the elder child and has not paid the agreed lump sum, or any maintenance for younger child. If wife proceeds under Guardianship of Infants Act presumably she must take proceedings in Scotland so far as elder child is concerned, as s. 2 (1) of Maintenance Orders Act, 1950, is not satisfied.

(1) Can wife apply to the English court under s. 1 of Maintenance Orders Act, 1950, and s. 4 of Summary Jurisdiction (Married Women) Act, 1895, on grounds of neglect to maintain her by virtue of husband's breach of verbal agreement to pay lump sum?

(2) If so, could court make an order for custody of the elder child under s. 5 (b) of the Act of 1895?

(3) If a custody order is made and not obeyed can the English court issue a committal warrant against the husband under s. 54 of the Magistrates' Courts Act, 1952, and could such warrant be executed in Scotland? SPAD.

Answer.

(1) Yes, and even if he had kept his agreement that would not be an absolute bar to proceedings. Relevant decisions are *Morton v. Morton* [1942] 1 All E.R. 273; 106 J.P. 139; *Tulip v. Tulip* [1951] 2 All E.R. 91 and *Dowell v. Dowell* [1952] 2 All E.R. 141; 116 J.P. 350.

(2) Yes.

(3) Yes, Magistrates' Courts Act, 1952, s. 103; Summary Jurisdiction (Process) Act, 1881, s. 4. It must be remembered that before a commitment can be issued a minute of order must be served in compliance with r. 42 (2) of the Magistrates' Courts Rules, 1952, and it is generally

considered that before any commitment is issued a summons must be served on the defendant, complaining of his disobedience and calling upon him to appear and show cause why he should not be dealt with for such disobedience.

### 4.—Landlord and Tenant—Rent and Mortgage Interest Restrictions Act, 1923, s. 5—Disrepair.

An application has been made to the local authority for a certificate under the above section. The garden wall of the dwellinghouse in question has been blown down in a recent gale. The wall abuts upon a highway. The tenant asks for the certificate on the ground that the premises are not in a reasonable state of repair, having regard to the definition of "repairs" in s. 18 (5) of the Act of 1923. I cannot trace any decision of the courts on this particular point and, although the definition of "house" in s. 188 of the Housing Act, 1936, includes a yard, garden, outhouses, and appurtenances, it is considered that s. 5 of the 1923 Act is intended to refer to the dwelling alone. The house is not in a condition to warrant a certificate in respect of the house alone, and your advice is sought as to whether, in your opinion, the tenant can demand such a certificate on the basis of the damaged wall. DAEDALUS.

Answer.

The definition of "house" in s. 188 of the Act of 1936 is subject to context, even in that Act; for example, we doubt whether a broken garden wall would bring s. 2 into operation. In the Act of 1923, where the definition is not incorporated, we are clearly of opinion that s. 5 does not extend beyond the house proper, except to an appurtenance like its main drain (or privy or cesspool, if it has one) which directly affects its habitability, and that "premises" in s. 18 (5) is to be construed accordingly.

### 5.—Lotteries—Private lottery—Publication of results.

A small local newspaper publishes, each Christmas time, the results of lotteries, and my attention has been drawn to this matter by an employee of a rival newspaper who states that such publications are illegal. The lotteries themselves are quite legal, as they come within the provisions of s. 23 and 24 of the Act, and the point at issue would appear to be whether the publication of lawful lottery results is a contravention of s. 24 (2) (b) which states there shall not be exhibited, published or distributed any written notice . . . of the lottery.

Can you tell me, please, if such publications are held to be a "notice" within the meaning of the Act. SIREN WORKER.

Answer.

Section 24 (2) relates to the "promotion and conduct of the lottery," and para. (b) must be read in the light of those words. We do not think the announcement of results is a "notice or advertisement" of the lottery, which has been conducted and concluded. If there were added to the bare result some statement about future lotteries an offence would be committed, but we do not consider the publication of the names of winners to be an infringement of the section.

We do not know of any decision on the point.

### 6.—Magistrates—Practice and procedure—Means inquiry warrant backed for bail—Release of defendant on bail if warrant executed in Scotland.

I should be glad to have your valued opinion on the following point:

By virtue of s. 70 (4) of the Magistrates' Courts Act, 1952, a warrant issued for the arrest of a fine defaulter "may be executed in like manner and the like proceedings may be taken with a view to its execution in any part of the United Kingdom, as if it had been issued under s. 15. . . ."

(Section 15, of course, provides for the issue of a warrant of arrest on the non-appearance of an accused, and under s. 103 of the same Act, the provisions of the Indictable Offences Act, 1848, relating to the execution of warrants in the British Islands outside England and Wales attach to warrants issued under s. 15.)

Section 93 of the same Act lays down that "a justice of the peace on issuing a warrant for the arrest of any person may endorse the warrant with a direction that that person shall on arrest be released on entering into a recognizance, with or without sureties, conditioned for his appearance before a magistrates' court . . ." and a footnote in *Chislett on the Magistrates' Courts Act* mentions that the provisions of this section apply to warrants issued under s. 15.

Is it then your opinion that a warrant for the arrest of a fine defaulter, endorsed for bail, should be executed by a police force outside England

and Wales by arresting and bailing the defendant, in lieu of payment?

This query has arisen because the police in Scotland declined to admit to bail on a warrant endorsed for bail.

JUBIN.

Answer.

There is no doubt that such a warrant can be endorsed for bail and can be executed in Scotland. Unfortunately s. 93 (2), which directs the police to release on bail in accordance with such an endorsement, does not apply to Scotland (see s. 133 (2)), and it seems to us that the action to be taken by the Scottish police to comply with any such endorsement must depend on Scottish law, of which we have not the necessary knowledge.

We assume that "in lieu of payment" in the question means "if payment is not made."

**7.—Music, etc. licence—Proposal to use premises licensed for weekdays as a "Skating Club" on Sundays**

Quite recently it has come to my knowledge that the proprietors of two skating rinks in this borough propose to organize roller skating clubs to operate on Sundays, and I would appreciate your observations on this practice, which on the face of things does not appear to be controlled by law.

The facts are similar in both cases, so I will deal with one only.

The hall used as a skating rink is licensed on six days a week for public music, singing and dancing, but the exits are considered inadequate for the number of dancers permitted by the floor space. The hall is therefore limited to 200 persons, which is not sufficient to cover the expenses of regular dances. Therefore the licence holder concentrates on skating and opens the hall each evening between 7 p.m. and 10.30 p.m. and Saturdays between 2.30 p.m. and 10.30 p.m.

The licensee now proposes to form a Sunday skating club and to provide music for the members. The club will not be registered and no intoxicants will be sold. The members will meet at the skating rink and will be able to purchase light refreshments provided by the licensee. They will pay a small subscription when admitted to membership and a list of members' names and addresses will be kept by the licensee, who I understand intends to form a committee and draw up a set of rules for the club. The admission of guests, temporary members and honorary members will be governed by the rules of the club. No one will be admitted to the club other than members and their guests, who will be made temporary members in accordance with the club rules. The fact that a club is in existence is not advertised otherwise than on the premises. As there is no necessity to register this type of club, it seems that there is no legislation governing the matter and that, providing members of the public are not admitted, music can be provided without a licence being in operation. It seems that a hall licensed for public entertainment on six days per week can become a private hall on a Sunday, still used for entertainment by skating or possibly dancing, by the simple expedient of patrons forming themselves into a club operated under rules set up by themselves. Furthermore, there does not appear to be any necessity to report the formation of the club to the chief officer of police or the justices' clerk, and in addition as the club is held on private premises police inspection cannot take place as it does in premises licensed for public entertainment. There are no local byelaws or regulations dealing with the formation or conduct of unregistered clubs, and I shall be grateful to have your observations and any information you may have on similar clubs in other parts of the country.

NONTOX.

Answer.

As our correspondent does not mention it, we assume that there is no condition attached to the music, etc., licence limiting the use of the premises to weekdays—see 116 J.P.N. 110 and 240.

Except for criticism directed against the objects of the club, the intention seems to be to form a body which has all the external features of a club, and we can do no more than agree with our correspondent that there is neither statute law nor case law to prohibit it.

We have no information about similar clubs, but questions which reach us from time to time indicate that there may be some—see, e.g., 115 J.P.N. 705.

**8.—National Assistance—Arrears under order of maintenance—Recovery—Variation of order.**

An order under s. 43 of the National Assistance Act, 1948, was made in favour of a local authority providing accommodation for the wife and children of A. The order was made for a weekly sum plus an amount in reduction of the arrears. The order was not complied with and judgment was subsequently given for the payment of a substantial sum within six weeks. This sum has not been paid. A has no goods on which to distrain and the authority cannot prove that A has the means to pay the debt or has had them since the making of the order. The position might have been different had the order been made for the payment of a considerably lower sum. I shall be grateful for your opinion as to whether the proceedings may be commenced over again and if you will let me know if any other course should be adopted.

S. ARIB.

Answer.

Sums due under s. 43, *supra*, are recoverable summarily as a civil debt, see s. 56. Sections 50 and 73 of the Magistrates' Courts Act, 1952, now apply. We assume that, the order for payment having been made, proceedings by way of a judgment summons have followed. We think that if at the hearing of the judgment summons the court was of opinion that the defendant had means to pay some sum less than the whole amount it could commit in default of payment of that sum if the local authority would agree to forego the balance. Alternatively the court could dismiss the judgment summons, leaving the local authority to make complaint again if evidence of means should be forthcoming.

If it is intended that the question of the amount of the weekly payments should be reconsidered, our answer is that application for a variation of the order could be made under s. 53 of the Magistrates' Courts Act, 1952.

We are a little in doubt as to the meaning of the reference to arrears, but we are taking this to mean that the court ordered payment of what it considered to be due in respect of expenditure by the local authority before the court made the order for weekly payments.

**9.—Road Traffic Acts—Disqualification—Provisional licence holder driving with no qualified driver in attendance and without L plates.**

Section 5 of the Road Traffic Act, 1930, provides that if the holder of a provisional driver's licence fails to comply with any of the conditions of such licence, he shall be guilty of an offence. Section 6 of the same Act empowers any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle (not being an offence under Part IV of the Act) to order the accused to be disqualified for holding or obtaining a licence for such period as the Court thinks fit. Your valuable opinion is sought on the question as to whether justices are empowered under s. 6 of the said Act to disqualify a person who is found guilty of the breach of one of the following conditions of his provisional licence:

(1) failing to display on the front and back of the vehicle a distinguishing mark in the form set out in the seventh schedule to the Motor Vehicles (Driving Licences) Regulations, 1950;

(2) that he shall use the vehicle only when under the supervision of a person who holds a licence, not being a provisional licence, authorizing him to drive a vehicle of the same class as the vehicle being driven by him, and who has been the holder of a licence for at least two years or has passed the required test.

The case of *Brown v. Crossley* (1911) 75 J.P. 177, decided that the offence of driving a motor-car on a highway after sunset and before sunrise without having the identification plate illuminated, was an offence "in connexion with the driving of a motor-car."

JUNIOR.

Answer.

We think that a breach of either of the said conditions is an offence in connexion with the driving of a motor vehicle and that the offender is liable, on conviction, to be disqualified for holding or obtaining a licence.

**10.—Road Traffic Acts—Lights—Headlamp fitted fifteen inches from ground—Dazzle alleged.**

A defendant was recently charged in my court with using a lamp on a motor-car in contravention of reg. 9 of the Road Vehicles Lighting Regulations, 1950. The vehicle in question was fitted with two side-lights in normal positions and also two lamps (low down) for use as headlamps. It was admitted that from the centre of the lamp (the subject of the charge) to the ground was only fifteen inches; that the power of the lamp exceeded seven watts; and that there was no fog or falling snow at the time. The police officer giving evidence stated that he was dazzled by the light from the lamp whilst driving a police car. The defendant's solicitor, however, submitted that the lamp was not a "foglamp" or "spotlamp" to bring it within the regulation, but a "headlamp" capable of being deflected downwards, or downwards and to the left, at the will of the driver, and at the time of the alleged offence was being used as a headlamp. The construction and fitting of the lamp was in fact as stated by the defence. The justices upheld the submission and dismissed the charge.

I shall be grateful for your opinion as to whether the lamp in question was a lamp to which the restrictions of use imposed by reg. 9 apply.

JERICHO.

Answer.

Regulation 9 (2) requires not only that the beam from the lamp can be deflected downwards, or downwards and to the left, but also that it shall then be incapable of dazzling anyone in the circumstances set out in reg. 9 (2) (i). Failure to dip the headlamp is not an offence against these regulations, but if, when dipped, the beam can cause dazzle as above the lamp does not, in our opinion, comply with reg. 9 (2). The facts stated in the question do not enable us to offer an opinion on the merits of this case, because, *inter alia*, it is not stated whether the dazzle alleged was caused when the lamp was dipped, or by failure to dip it.



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